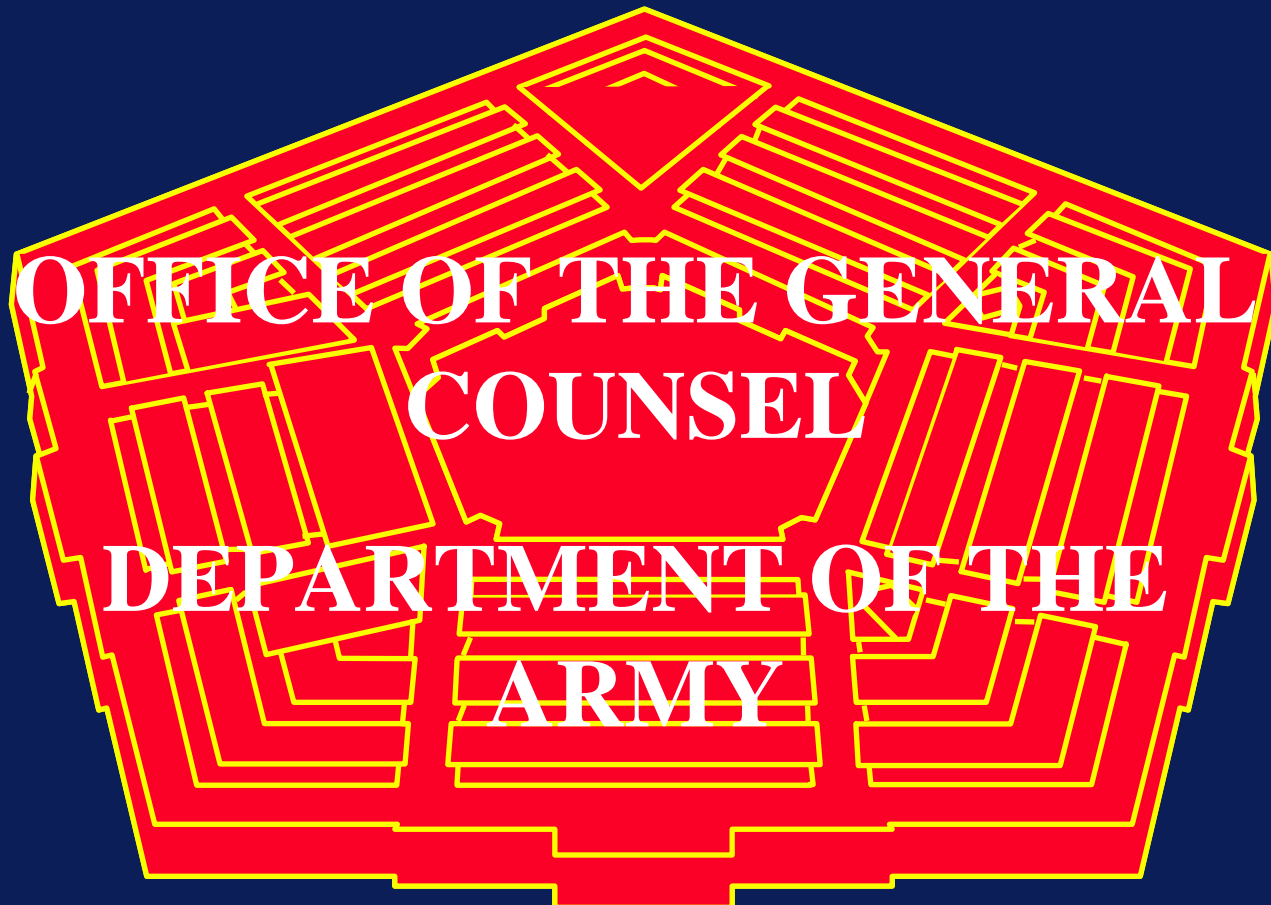


FISCAL LAW FOR ETHICS COUNSELORS



Paul D. Hancq

Associate Deputy General Counsel
(Ethics & Fiscal)





*"Do you think now that we're doing fewer illegal things
we can scale back the legal department?"*

A FISCAL "PHILOSOPHY"

THE SUPREME COURT

"The established rule is that the expenditure of public funds is proper only when authorized by Congress, NOT that public funds may be expended unless prohibited by Congress."

United States v. MacCollom,
426 U.S. 317 (1976)





It's
the
Law



Comptroller General (GAO)

- Advance decisions on propriety
- DoD policy: resolve internally with legal advice from GC
- DoD can go to GAO only with prior approval of Service GC and DoD OGC
- DoD FMR, Vol. 5, Ch. 1, ¶ 0108

Appropriations

- Legally distinct
- “Pots” or “Colors”
- MPA, RPA, NGPA;
APA, MPA, PWTCVA,
PAA, OPA; RDTE, A;
MILCON, AFH . . .
and OMA, OMAR,
OMANG





It's
the
Law

PURPOSE

TIME

AMOUNT

PURPOSE

- 31 U.S.C. § 1301(a)
- Three-part test
 - Statutory purpose
OR necessary and incident
 - Not prohibited by law
 - Not otherwise provided for,
not in scope of another
appropriation



Food

- Personal Expense
- Exceptions
 - TDY
 - Non-separable facility rental
 - Awards ceremonies (limited!)
 - Training (if nonseverable, Gov't can sever)
- Routine agency meetings
 - Conditions
 - Generally NO



Food at Conferences

- Sponsored by NFEs
 - Yes, if nonseverable
 - Maybe, if severable
- Sponsored by agency
 - Same standards above
 - Matter of topical interest
- Sponsored by DoD
 - Yes, if all conditions met
 - No otherwise



Bottled Water

- Personal Expense
- Generally no
- Maybe, if unpotable or unavailable and really necessary



Entertainment

- Personal Expense
- Generally no
- Statutory authority
- EEE



Gifts

- Gifts
 - Personal Expense
 - Statutory authority
 - EEE



Awards

- To military –
10 U.S.C. § 1125
- To Gov't civilian
employees –
Incentive Awards
Act
- To contractors &
others – NO



Commander's Coins

- Widespread
- Awards to military (unique or excellence)
- In practice: gifts, tokens of appreciation, calling cards



Commander's Coins

- DA Memo 600-70 (HQDA & FOAs)
- GO or SES principals
- SA, CSA, SMA can personalize
- No coins for contractors!



Expense/Investment

- OMA if < \$250K
- OPA if > \$250K or centrally managed
- Per system, not per component
- Provision in annual appropriations acts
- 10 U.S.C. § 2245a
- Problems: lease, service



Emergency and Extraordinary Expense (EEE) Funds

- Subset of O&M
- 10 U.S.C. § 127
 - “any purpose”
 - Notice and wait if > \$500K
 - No other funds legal



Official Representation Funds (ORFs)

- A type of EEE
- “.0012” funds
- Hosting, representation, and official courtesies
- Alcohol, gifts, entertainment



Official Representation Funds (ORFs)

- Strict regulatory controls
- “Authorized guests”
- Required ratios
- Prohibitions
- Accounting



Official Representation Funds (ORFs)

- Avoid misuse!
 - Favor DoD personnel
 - Personal expenses
 - Augmentation





It's
the
Law

TIME

- 31 U.S.C. § 1502(a) – Bona Fide Need Rule
- Period of availability
- Only for expenses properly incurred or to complete contracts properly made



TIME

- Supplies

- Buy during year of use
- Exceptions: Stock Level, Lead Time

- Services

- Year of performance
- Severable 10 U.S.C. § 2410a
- Nonseverable





It's
the
Law

AMOUNT

- Amounts legally available
- Administrative subdivisions
- Control rates of obligation and expenditure





It's
the
Law

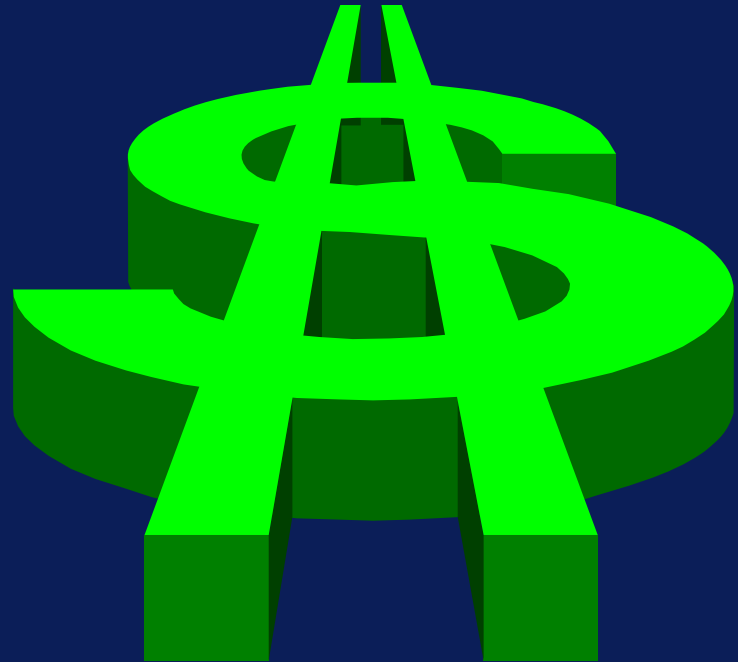
FISCAL CONTROLS

- **PURPOSE**
- **TIME**
- **AMOUNT**



FISCAL CONTROLS

- P
- T
- A



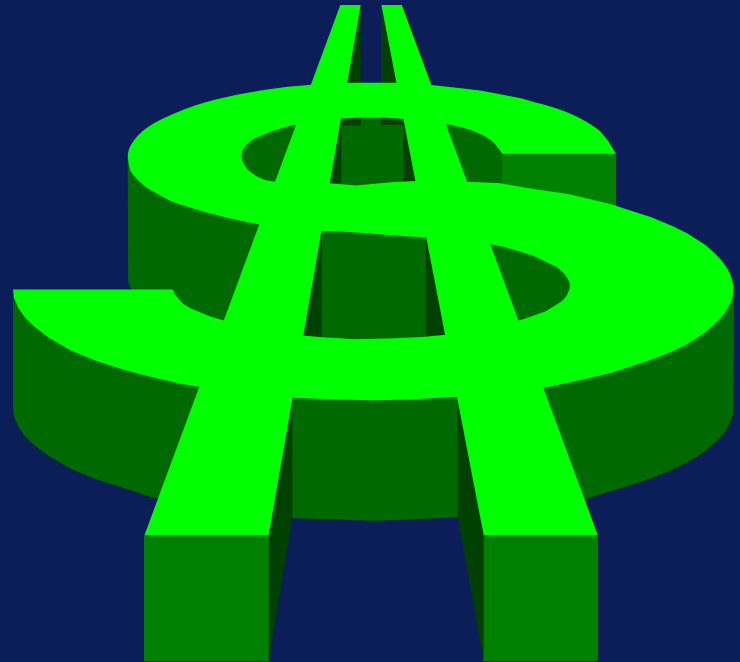
FISCAL CONTROLS

- COLOR
- YEAR
- ACCOUNT



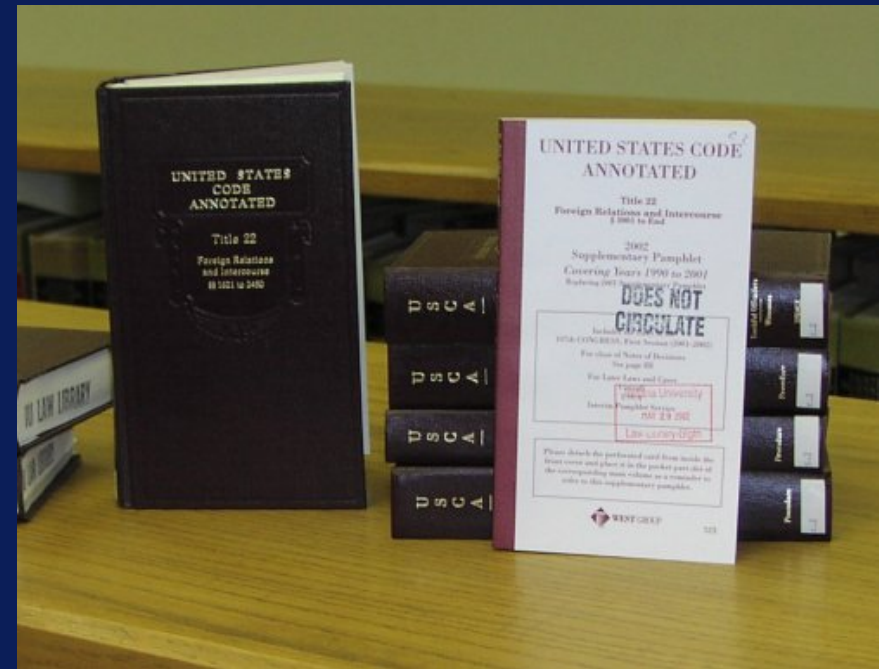
FISCAL CONTROLS

- C
- Y
- A



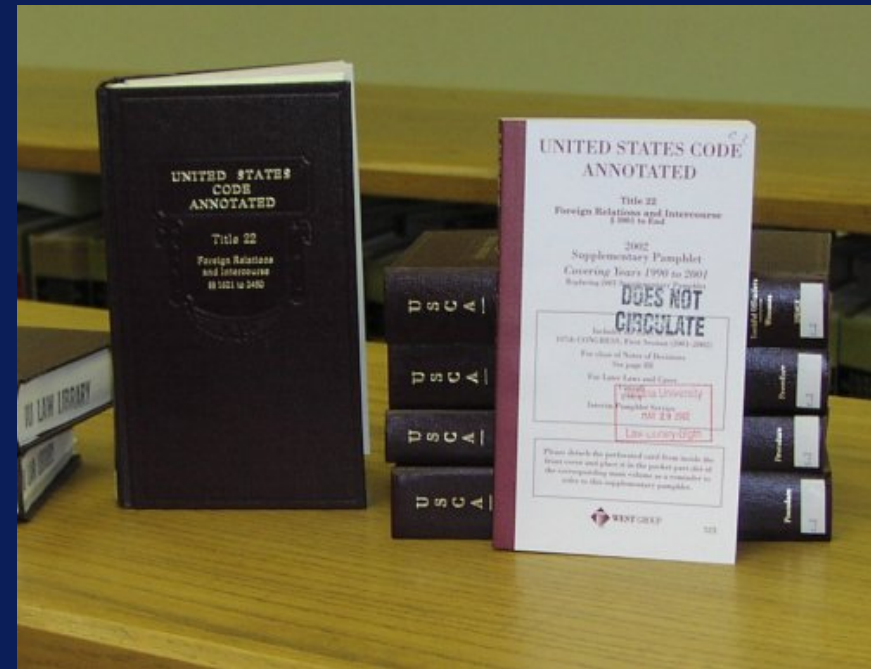
Antideficiency Act (ADA)

- 31 U.S.C. § 1341
 - Make or authorize ob or exp in excess of amount legally available
 - Ob or exp in advance of
- 31 U.S.C. § 1342
 - Voluntary services
 - Personal services
- 31 U.S.C. § 1517
 - In excess of formal subdivision
 - In excess of amounts permitted by regulation



Antideficiency Act (ADA)

- Purpose, Time, and Amount violations
- Duty to correct
- If cannot correct, legal deficiency



Antideficiency Act (ADA) Violations

- Knowing and willful = criminal
- \$5,000 fine + two years in prison



Antideficiency Act (ADA) Violations

- Other violators
 - Oral admonition
 - Written reprimand
 - Suspension
 - Withdraw warrant
 - Terminate employment



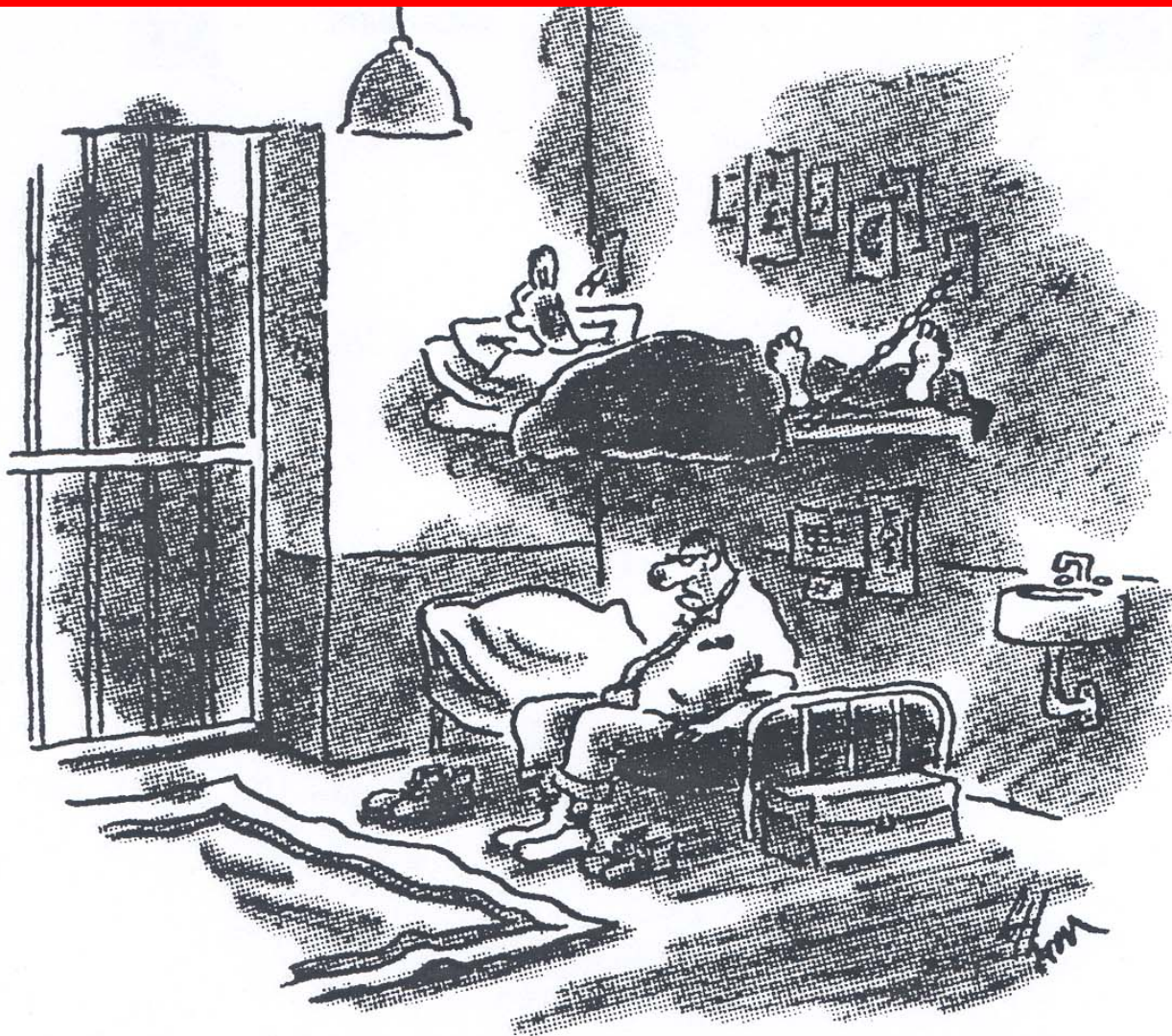
Early Detection / Early Correction!





GREGORY

"I'd like your honest, unbiased and possibly career-ending opinion on something."



"This is what happens when ethical standards are set artificially high."